

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**PETITION TO COMMENCE RULEMAKING)
PROCEEDING FOR INSTITUTIONAL)
OPERATOR SERVICE PROVIDERS)**

Case No. 10-00198-UT

**INMATE CALLING SOLUTIONS, LLC, AND)
PUBLIC COMMUNICATIONS SERVICES,)
INC.,)
Petitioners.)**

FINAL ORDER AND FINAL RULE

THIS MATTER comes before the New Mexico Public Regulation Commission (NMPRC or the Commission) upon the record in this case; whereupon, being duly advised, the Commission finds and concludes as set forth below.

STATEMENT OF THE CASE

1. In January 2012, this Commission issued a Notice of Proposed Rulemaking (NOPR), commencing a rulemaking proceeding for the purpose of creating a rule under 17.11.12 NMAC governing the provision of telecommunications services by institutional operator service providers (IOSPs).

2. The purpose of this rulemaking has been to seek comments for the purpose of developing a rule and regulations specifically applicable to all IOSPs that would address: establishing rate caps; developing phase-in language for existing contracts that IOSPs have at institutional facilities; creating consumer protection criteria; identifying and prescribing complaint procedures; developing transparency provisions to be used by IOSPs; addressing service quality issues; establishing notices and information at facilities; and establishing variance/waiver processes at the Commission. The rule should ensure that the IOSPs have tariffs on file that reflect all services and fees and that

the IOSPs provide quality of service and customer protection to inmates and their families/sponsors. All IOSPs doing business within New Mexico, as well as any IOSP that might want to do business in New Mexico in the future, were encouraged to participate in this rulemaking proceeding, along with other entities and individuals.

3. By way of background, this rulemaking came before the Commission pursuant to Decretal Paragraph C of the *Final Order Partially Approving Certification of Stipulation* issued by the Commission on June 24, 2010 involving three separate proceedings concerning the provision of service by IOSPs¹ (*Final Order*), and the *Order to File Consensus Draft Rule* issued by the Commission in this case on December 23, 2010. Decretal Paragraph B of the *Order to File Consensus Draft Rule* directed Public Communication Services, Inc. (PCS) and Inmate Calling Solutions, LLC d/b/a ICSolutions (ICS) to file a Notice of Proposed Rulemaking in Case No. 10-00198-UT which “attaches a complete consensus, draft Rule Concerning Institutional Operator Service Providers no later than February 15, 2011.” In addition to PCS, ICS and NMPRC Staff, other IOSPs participated in the development of the proposed rule. .

4. Affidavits attesting to the publication of the *Notice of Proposed Rulemaking* in at least two newspapers of regular circulation in the State of New Mexico, and in the NEW MEXICO REGISTER, were filed in the record.

¹ See *Certifications of Stipulation* submitted to the Commission on May 11, 2010 in the following cases: *In the Matter of a Commission Inquiry into the Rates and Charges of Institutional Operator Service Providers* (Case No. 07-00316-UT); *In the Matter of an Investigation into the Billing Practices of Public Communications Services, Inc.* (Case No. 07-00364-UT); and *In the Matter of an Investigation of Non-Tariffed Charges of Institutional Operator Service Providers* (Case No. 07-00442-UT). The Commission issued an *Order to Amend Final Order Partially Approving Certification of Stipulation* in all three of those cases on July 6, 2010.

5. Due and lawful notice has been provided.

6. On March 12, 2012, Staff filed its initial comments in this case with respect to the consensus draft rule proposed rule filed by Public Communications Services, Inc. ("PCS") and Inmate Calling Solutions, LLC d/b/a ICSolutions ("ICS") on February 5, 2012. Staff proposed alternative or additional language for certain sections of the consensus draft rule with which Staff took issue. Also on March 12, 2012, comments about the consensus draft rule were filed by three Institutional Operator Service Providers ("IOSPs") - Global Tel*Link Corporation ("GTL") and Securus Technologies, Inc. and T-Netix Telecommunications Services, Inc 1 (collectively, "Securus") - and by the New Mexico Criminal Defense Lawyers Association ("NMCDLA").

7. A public hearing on the proposed rule language was held on May 2, 2011 at the offices of the Commission before Commissioner Jason A. Marks.

8. The following entities appeared and presented comments at the public hearing:²

**GTL,
Securus,
NMCDLA, and
NMPRC Utility Division Staff.**

² The Commission specifically invited the NM Attorney General, NM Association of Counties, NM Municipal League, NM Sheriffs' and Police Association, NM Department of Corrections, NM Criminal Justice Association, NM Sentencing Commission, the State Bar of New Mexico, New Mexico Legal Aid, and the American Civil Liberties Union ("ACLU") of New Mexico to participate. However, none of those organizations submitted comments in this rulemaking.

DISCUSSION

9. This Commission has jurisdiction over telecommunications companies and specifically IOSPs in the State of New Mexico as provided by the New Mexico Constitution, Article XI, Section 2 and by the New Mexico Legislature pursuant to NMSA 1978, §§ 63-9A-1 *et seq* (New Mexico Telecommunications Act); and NMSA 1978, §§ 8-8-4 *et seq*. (the Public Regulation Commission Act).

10. We have reviewed all of the comments submitted before and during the hearing, as well as all materials filed in accordance with the oral order of the presiding Commissioner at hearing regarding post-hearing submissions.

11. Staff observed in its initial filed comments that the February 15, 2011 consensus draft rule as filed by PCS and ICS did not include alternative language for those sections of the rule where no consensus was reached. Staff proposed alternative or additional language for certain sections of the consensus draft rule that Staff did not support. In its subsequent response comments, Staff stated that it and a number of IOSPs participated in extensive discussions to reach a consensus on a draft rule, and that, while a consensus was reached for the “lion’s share” of a draft rule, Staff had concerns with a small number of critical provisions that generally pertain to the transparency of terms and conditions of inmate telephone service and to the impact of a per-call rate structure on unintentionally short calls. Staff set forth its concerns in its response comments.

12. Having reviewed those portions of the rule language submitted by Staff in its initial comments, we find that much of Staff’s proposed language has merit, is consistent with our purpose in this rulemaking, and should be adopted.

13. As an IOSP, GTL noted in its comments several places in the draft consensus rule that should be clarified to reflect current technology and to increase precision regarding rate caps.

14. Having reviewed those portions of the rule language submitted by the IOSPs subsequent to their submittal of the draft consensus rule, and the comment and partial consensus reached on certain items during the public hearing, we find that we should adopt as our Final Rule the language contained herein in Exhibit A. Our Final Rule also includes suggestions made by NMCDLA.

15. Our Final Rule, attached to this Final Order as Exhibit A, includes Addendum A, consisting of the Rate Cap schedule we adopt today. The companies that were parties in the cases referenced herein at footnote 1 (or their successors) may petition the Commission for a blanket variance from the Addendum A rate caps based on the rates determined by the Commission to be just and reasonable in those prior cases.

IT IS THEREFORE ORDERED:

A. The Commission hereby adopts and promulgates its Final Rule in this proceeding. A copy of the Final Rule is attached to this Final Order as Exhibit A. Attached to the Final Rule is Addendum A, consisting of the Rate Cap schedule referenced herein at ¶ 15.

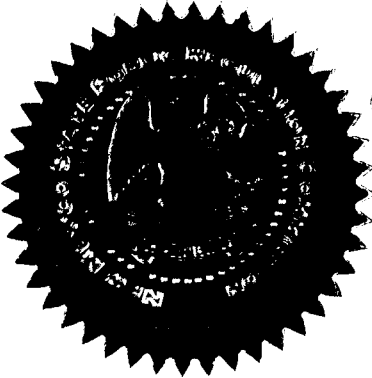
B. This Final Order is effective immediately.

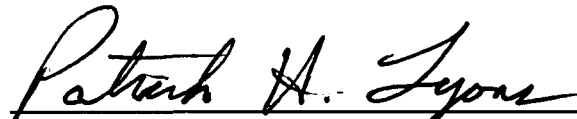
C. Copies this Final Order, together with Exhibit A hereto (including Addendum A), shall be served via e-mail upon all persons listed on the attached Certificate Of Service whose e-mail addresses are known, or otherwise via regular mail.

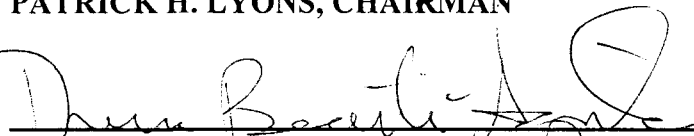
D. This Docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 8th
day of November, 2012.

NEW MEXICO PUBLIC REGULATION COMMISSION




PATRICK H. LYONS, CHAIRMAN


THERESA BECENTI-AGUILAR, VICE-CHAIR


JASON MARKS, COMMISSIONER


DOUGLAS J. HOWE, COMMISSIONER


BEN L. HALL, COMMISSIONER

FINAL RULE

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART XX INSTITUTIONAL OPERATOR SERVICE PROVIDERS

17.11.12.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

17.11.12.2 SCOPE:

This rule is applicable to all Institutional Operator Service Providers (“IOSPs”) certified to operate within the State of New Mexico and also to those IOSPs who apply to the Commission to operate within the State of New Mexico.

17.11.12.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to Article XI, Section 2 of the New Mexico Constitution and NMSA 1978, §§ 8-8-4 *et seq.*, §§ 63-7-1 *et seq.*, and §§ 63-9A-1 *et seq.* (New Mexico Telecommunications Act).

17.11.12.4 DURATION:

Permanent.

17.11.12.5 EFFECTIVE DATE:

This rule shall be effective on its date of publication in the New Mexico Register in accordance with NMSA 1978, § 14-4-5.

17.11.12.6 OBJECTIVE:

The purpose of this rule is to establish statewide uniform regulations governing IOSPs so as to ensure reasonable rate regulation for IOSPs while protecting consumers against unreasonable rates and inadequate service.

17.11.12.7 DEFINITIONS:

As used in this rule, the following terms have the meanings provided, unless a different meaning is clearly expressed in the context in which the term is used. The Commission will interpret the definitions broadly enough to ensure compliance with the purpose of this rule.

- A. **Commission** means the New Mexico Public Regulation Commission.

- B. **Complaint** means an oral or written expression of dissatisfaction with an IOSP's rates, fees, charges, or services, including a request for repair involving service outage, made to the IOSP, Correctional Institution, or to the Commission by or on behalf of a Consumer.
- C. **Consumer** means a person who is an account holder or one who funds, initiates or receives a telephone call from an Institutional Phone. For purposes of those portions of this rule that apply to the funding of prepaid accounts, Consumer also means a person who funds a prepaid account for IOSP services.
- D. **Correctional Institution** means a jail, prison, penal facility or other confinement facility.
- E. **Institutional Operator Service** means intrastate telecommunications services initiated by a confined person in a Correctional Institution that includes, as a component, automatic or live assistance to arrange for completion or billing, or both, of an intrastate telephone call, consistent with 47 C.F.R. § 64.708(i).
- F. **Institutional Operator Service Provider (IOSP)** means a provider of Institutional Operator Service.
- G. **Institutional Phone** means a telephone instrument accessible only to confined persons in a Correctional Institution.
- H. **Local Call** means a telephone call which originates on an Institutional Phone and terminates to a telephone number within the same local calling area as defined by the local exchange company for the area in which the call originates.
- I. **Postpaid Collect Call** means a call for which the rate or charge is billed to the call recipient on the monthly bill from the recipient's local telephone company, or from the IOSP, or from a third-party IOSP billing agent.
- J. **Prepaid Collect Call** means that the rate or charge of the call is deducted from an account funded in advance by the call recipient for this purpose.
- K. **Prepaid Institutional Call** means a call for which the confined person pays the rate or charge for the call by purchasing, generally from the commissary at the Correctional Institution, either a prepaid card from which the rate or charge for the call is subtracted or, if without a prepaid card, by setting up a prepaid account from which the rate or charge of the call can be deducted.
- L. **Rate Cap** means the maximum allowable rates, fees and charges for intrastate calls initiated from an Institutional Phone as approved by the Commission.
- M. **Toll Call** means a telephone call which originates on an Institutional Phone and terminates to a telephone number in a different local calling area as defined by the local exchange company for the area in which the call originates.

17.11.12.8 **EXEMPTIONS:**

IOSPs are exempt from 17.11.15 NMAC, Rule Concerning Payphone Providers, 17.11.16.11 NMAC, Consumer Protection, Access to Service and Rate Information, and SCC 94-02-TC, Rule Concerning Operator Services Providers.

17.11.12.9 **APPLICATION FOR CERTIFICATION OF REGISTRATION:**

A. Providers currently offering institutional operator service to persons housed in Correctional Institutions in New Mexico as of the Effective Date of this rule shall submit an expedited application for registration in the format prescribed by the Commission within ninety (90) days of the Effective Date of this rule as described in this section.

- (1) Staff shall review an application for a certificate of registration within thirty (30) calendar days after filing to determine whether it is complete. If the application is complete the Director of the Utility Division, or the Director's designee, shall issue a certificate of registration if it finds that the applicant is fit to provide Institutional Operator Services, and that issuance of the certificate of registration is in the public interest.
- (2) If the application is incomplete, Staff will return it to the applicant. A certificate of registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection. Denial may be cured if corrected within thirty (30) days of service of the Notice.

B. Providers seeking to offer or provide any telecommunications service through an Institutional Phone must register with the Commission in the format provided by the Commission.

- (1) In addition to the application for registration, the IOSP must file a copy of the information to be posted or supplied at every Institutional Phone or otherwise provided to the confined persons containing all the information as spelled out in this rule.
- (2) Registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection. Denial may be cured if the stated reasons for rejection are made within thirty (30) days of service of the Notice.

C. Registration shall be renewed annually by filing an annual report on a form prescribed by the Commission. The annual report shall be submitted by April 1st of each year and shall contain information regarding the prior year. At a minimum, the IOSP shall update any information contained in its original application for registration or last annual report, as appropriate.

CONTENTS OF APPLICATION FOR REGISTRATION:

An application for a certificate of registration to provide Institutional Operator Services must contain:

- A. the name, address, e-mail address and telephone number of the applicant;
- B. the name, address, e-mail address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the applicant;
- C. a description of the applicant's existing operations and general service and operating areas in any other jurisdictions;
- D. a statement that the applicant is aware of and will comply with the Commission's rules;
- E. disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanctions within the five (5) years prior to the date of filing the application. If such action has occurred, the applicant shall file a report regarding such action and any remedial actions taken;
- F. disclosure of any settlement or stipulation with any state or federal regulatory agency within the three (3) years prior to the date of filing the application that resulted in a payment to the agency with or without any admission of wrongdoing;
- G. if the applicant is a corporation, evidence that the applicant is authorized by the Corporations Bureau of the Commission to do business in New Mexico and that it is in good corporate standing in New Mexico;
- H. if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the applicant's agent for service of process in New Mexico, and the date the entity was created;
- I. initial tariffs for regulated telecommunications services, including a narrative description of the services to be offered and the geographic area and markets to be served. Initial tariffs shall not contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms, or conditions;
- J. if the applicant is a regulated carrier, any other information the Commission may reasonably require to accomplish the purpose of this rule; and
- K. a list of the applicant's parent, subsidiary, and affiliated companies that are carriers in New Mexico, together with the principal address and telephone numbers of each: [See 17.11.19.10.D and 17.12.21.11.D NMAC]

17.11.12.11

DISCLOSURE OF RATES, FEES AND CHARGES:

A. All IOSPs must disclose their rates, fees, and charges.

- (1) For all Local Calls,, and intrastate Toll Calls the IOSP shall comply with all rate disclosure requirements adopted by the Federal Communications Commission in Title 47 C.F.R. § 64.710 (Operator Services for Prison Inmate Phones), including any amendments thereto.
- (2) Rates, fees and charges applied pursuant to this rule shall be made available to the Consumer prior to the commencement of the transaction without the Consumer having to dial a separate telephone number or access a separate web site. Such information shall include an equally prominent disclosure of alternative funding or refunding mechanisms that are free of transactional fees.

B. The information required by this section must be delivered to the Correctional Institution by the IOSP for posting on or near the Institutional Phone, in plain view of confined persons, provided that such signage is allowed by the Correctional Institution. The posted signage must clearly and simply disclose all applicable rates, fees and charges for Institutional Operator Services set forth in this rule and provide the contact information for the IOSP for Consumer complaints as well as the mailing address of the Commission's Consumer Relations Division for unresolved Consumer complaints.

C. An IOSP shall disclose all rate information, including all applicable per-call and per-minute rates, in simple and clear language.

D. All required information and instructions, if allowed by the Correctional Institution, must be provided in both English and Spanish, and an IOSP must supply each facility it serves with a display placard or other means of informing confined persons.

E. Consumers who are not confined persons shall be advised of contact information for Consumer complaints on their bill when that bill includes charges for postpaid collect calls, or each time a funding transaction related to a prepayment account takes places, and shall have access to the IOSP's customer service representative.

17.11.12.12

COMPLAINTS: Complaints regarding violations of this rule shall be governed by 1.2.2.13 through 1.2.2.20 NMAC and 17.11.16.22 NMAC. All other procedural matters shall be handled in accordance with 1.2.2 and 1.2.3 NMAC.

17.11.12.13

ENFORCEMENT:

A. Initiation of proceedings: Upon receipt of a Complaint alleging a violation of this rule, or on its own motion, the Commission may initiate proceedings in accordance with its Rules of Procedure NMAC 1.2.2.13 through 1.2.2.15.

- B. Penalties: Following notice and hearing and upon a proper finding that a violation of this rule has occurred, the Commission may, consistent with its statutory authority, assess fines or penalties or other such remedies as may be provided for by law, including revocation of authority to provide Institutional Operator Service. The remedy imposed by the Commission may be reduced or rescinded if violations or findings of non-compliance are corrected within 30 days from the date of the Commission's Final Order.
- C. Other penalties: The assessment of any penalty by the Commission for a violation of this rule shall not preclude the assessment of a penalty by any other New Mexico agency for violation of its rules arising from the same cause.

17.11.12.14 **INSTITUTIONAL OPERATOR SERVICE RATES, FEES AND CHARGES:**

- A. All IOSPs must file tariffs with the Commission which set forth the services provided along with any rates, fees, or charges for those services and list each Correctional Institution to which those rates, fees, or charges apply. Tariffs shall also identify the billing and collection methods utilized by the IOSP such as Postpaid Collect, Prepaid Collect, Prepaid Institution and any other payment alternatives. No tariff or proposed tariff shall contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms or conditions.
- B. Rate Caps shall be determined periodically by the Commission on its own motion following notice and a public hearing, but no more frequently than once every three years. In the absence of a hearing by the Commission, the Rate Caps previously established will remain in effect.
- C. Any changes in IOSP rates, fees or charges and any cessation or commencement of Institutional Operator Service at a particular Correctional Institution resulting from a new, renewed, or amended contract between an IOSP and the Correctional Institution must be reflected in a proposed tariff amendment filed no later than ninety (90) days after the final award of the contract to the IOSP or after any agreement to change the rates, fees or charges is reflected in a renewed or amended contract.
 - (1) The IOSP shall file with the Commission an original and five (5) copies of the proposed tariff changes within the time frame provided for in this rule. The IOSP shall include in its filing a sequentially numbered transmittal letter, (*e.g.*, 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff change shall comply with all applicable Commission rules. The proposed tariff changes may go into effect ten (10) business days after the tariff filing unless Staff notifies the IOSP within said ten (10) business days of its concerns regarding the proposed tariff changes. If Staff and the IOSP are able to resolve Staff's concerns within ten (10) business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.
 - (2) If Staff and the IOSP are unable to resolve Staff's concerns, Staff shall file a protest with the Records Management Bureau of the Administrative Services Division, and

promptly send a copy to the IOSP and the proposed tariff change shall not go into effect. The Records Management Bureau shall assign a docket number to Staff's protest. Staff's protest shall include a case caption and a heading that states "Staff Protest". The protest shall include as an attachment the proposed tariff changes filed by the IOSP and any additional information furnished to Staff by the IOSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.

- (3) On the same day it files paper copies of the proposed tariff changes with the Commission, the IOSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The Commission may prescribe additional form, content, manner of filing, or other requirements.

D. Any other changes in IOSP rates, fees, charges, or type of service, and any addition of a new service must be reflected in a proposed tariff amendment. No such change may be effectuated by the IOSP prior to Commission approval of the tariff amendment.

- (1) The IOSP shall file with the Commission an original and five (5) copies of the proposed tariff changes within the time frame provided for in this rule. The IOSP shall include in its filing a sequentially numbered transmittal letter, (*e.g.*, 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff change shall comply with all applicable Commission rules. The proposed tariff changes may go into effect ten (10) business days after the tariff filing unless Staff notifies the IOSP within said ten (10) business days of its concerns regarding the proposed tariff changes. If Staff and the IOSP are able to resolve Staff's concerns within ten (10) business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.
- (2) If Staff and the IOSP are unable to resolve Staff's concerns, Staff shall file a protest with the Records Management Bureau of the Administrative Services Division, and promptly send a copy to the IOSP and the proposed tariff change shall not go into effect. The Records Management Bureau shall assign a docket number to Staff's protest. Staff's protest shall include a case caption and a heading that states "Staff Protest". The protest shall include as an attachment the proposed tariff changes filed by the IOSP and any additional information furnished to Staff by the IOSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.
- (3) On the same day it files paper copies of the proposed tariff changes with the Commission, the IOSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The Commission may prescribe additional form, content, manner of filing, or other requirements.

E. Every Institutional Phone in New Mexico shall provide access to the services listed below without the use of coins or cards of any type, and without any charge to the Consumer:

- (1) Any call to obtain a refund;
- (2) Access to automated operator services necessary to establish a call.; and

F. An IOSP may not bill any rate, fee, or charge that is not part of its tariff. Any per call charge, surcharge or fee shall not be billed or charged by the IOSP before the second minute of the call begins.

G. An IOSP may not bill or charge any transactional fee in connection with the establishment of, funding to, or refunding from an account in the Consumer's name used for the prepayment of Institutional Operator Service that has not been previously approved for that purpose by the Commission.

H. An IOSP may assess fees that are included in the IOSP's filed tariffs.

I. Effective Dates: The Rate Caps established pursuant to this rule

- (1) will not apply to any contract that was executed prior to the Effective Date of this rule,
- (2) will not apply to any contract for which a response to a Request for Proposal was submitted prior to the Effective Date of this rule,
- (3) will apply to any contract executed ninety (90) days following the Effective Date of this rule, and
- (4) will apply to any contract that is renewed or renegotiated ninety (90) days following the Effective Date of this rule.

17.11.12.15 **RESPONSIBILITIES OF THE INSTITUTIONAL OPERATOR
SERVICE PROVIDER:**

- A. An IOSP shall not contract for any intrastate operator services or interexchange services with any entity that is out of compliance with the applicable certification requirements of the Commission.
- B. The IOSP shall be responsible for all public access line charges associated with the provision of Institutional Operator Service.
- C. The IOSP shall be responsible for paying all required regulatory fees to the Commission.

- D. Subject to compliance with any access requirements of the Correctional Institution, IOSPs will make available to the Commission, subject to notice and coordination, any Institutional Phone for purposes of making test calls, free of charge, to telephone numbers of the Commission's choosing.
- E. All Institutional Phones and the telecommunications facilities used for the transmission of service are subject to periodic inspections to ensure compliance with Commission requirements. Findings of non-compliance will be brought to the attention of the IOSP and the Correctional Institution by letter and the IOSP will have thirty (30) days to restore compliance with Commission requirements.
- F. The IOSP shall be responsible for repairing, servicing and maintaining in good repair the Institutional Phones through which it provides service.
- G. All Institutional Phones installed in New Mexico shall comply with state and local laws, Commission rules, current National Electrical Code and National Electrical Safety Code requirements, and the generally accepted telecommunications industry technical standards of the National Association of Regulatory Utility Commissioners.
- H. All calls initiated from an Institutional Phone will be outbound automated operator calls that are either Postpaid Collect Call, Prepaid Collect Call or Prepaid Institution Call.
- I. An IOSP shall provide a means for a confined person who has not had an opportunity to arrange for prepaid calling services to make an outgoing Postpaid Collect Call.
- J. The minimum allowance for the duration of a call initiated from an Institutional Phone shall be determined by the correctional institution.
- K. No more than three Institutional Phones will share a common voice-grade (non-broadband) access line or channel, unless otherwise specifically authorized by the Commission.
- L. Institutional Phones operating in New Mexico must comply with all applicable federal, state and local laws regarding accessibility by hearing impaired or physically disabled persons.
- M. All IOSPs must provide both local and toll service at each Correctional Institution they serve.
- N. Institutional Operator Service transmission quality shall be at least equivalent to generally accepted industry standards for wireline, voice-grade circuits, except that IOSPs will not be held responsible for calls terminating to cordless landlines, cell phones, or other non-traditional landline devices. There will be no transmission delay, feedback, excessive noise, or echo perceptible to either the inmate or the called

party. The Commission will make the final determination as to the acceptable level of transmission service quality.

17.11.12.16 RESTRICTIONS ON INSTITUTIONAL TELEPHONE SERVICE:

Operators of Correctional Institutions have the authority to limit or deny access to Institutional Phones telephones at times and in circumstances deemed proper by the Correctional Institution.

17.11.12.17 RATE CAP VARIANCES:

- A. The Commission may permit an IOSP to impose rates higher than the Rate Caps as provided for by Addendum A to this rule as may be amended from time to time or as stated in a separate Commission Order for good cause shown. Such permission shall not be unreasonably withheld.
- B. An IOSP seeking a variance under this rule must file a Petition for Variance with the Commission providing the following information:
 - (1) The Correctional Institution(s) at which the rate that exceeds the rate cap would be applied.
 - (2) The rate to be applied and the respective existing Rate Cap.
 - (3) The reason for which a higher rate will be applied shall include the following information about the proposed service for the call type(s) for which the variance is sought:
 - (a) Projected monthly and yearly call volume by call type
 - (b) Projected monthly and yearly revenue by call type
 - (c) Projected monthly and yearly average call duration by call type
- C. The Petition must include a sworn statement by a knowledgeable representative of the Petitioner attesting to the truth and accuracy of its contents.
- D. The Petition shall be accompanied by a proposed tariff change that incorporates the higher rate that the Petitioner seeks to impose. All IOSP tariffs shall include a section for rate variances in which all such higher rates are to be listed.
- E. At the request of the Petitioner, the information provided pursuant to subsections (B)(1) and B(3) herein will be treated as confidential and will not be disclosed to any person other than an employee or member of the Commission until the Petitioner consents in writing to such disclosure.

- F. Staff shall review the Petition for Variance within thirty (30) days to determine whether it is supported by the information provided. Staff may file a written statement with the Commission in support of or opposition to the Petition within the same thirty-day (30-day) period. The IOSP shall have ten (10) days to respond to any Staff position.
- G. In the absence of any Commission action on the Petition, the Petition will be deemed granted and the proposed tariff change will be deemed approved forty-five (45) calendar days from the filing of the Petition.
- H. IOSPs are not subject to Section 1.2.2.40 NMAC for matters related to rate variances pursuant to this rule.

17.11.12.18 CONSUMER PROTECTION:

- A. The IOSP shall complete a call only upon a positive response from the Consumer that the Consumer accepts all previously disclosed charges for the call. The provider shall allow Consumers the opportunity to decline and thus terminate the call at no charge to the Consumer. If the IOSP does not receive a positive response within a period not exceeding 20 seconds from the last prompt, the call shall be terminated without charge. IOSPs shall not charge for any calls that are not accepted by the called party.
- B. Where not superseded by the express language of this rule, the Commission's Consumer Protection rule, 17.11.16 NMAC, applies, except for those provisions that by their language apply only to non-IOSPs.

17.11.12.19 REPORTING REQUIREMENTS:

- A. Existing IOSPs shall report to the Commission not later than April 1 of the calendar year following the effective date of this rule and new IOSPs shall report to the Commission within 90 days of certification the type of access line(s) and the number of Institutional Phones installed by correctional facility for each correctional facility in New Mexico served by the Provider on December 31 of the preceding year or, in the case of new IOSPs, the latest date such information is available. IOSPs shall update this information upon Staff's request.
- B. IOSPs shall report to the Commission not later than April 1 the number and percentage of calls initiated from an Institutional Phone with a duration of 60 seconds or less by correctional institution for the preceding calendar year.
- C. Upon request from the Commission, IOSPs must, in a timely manner, and in accordance with confidentiality agreements between the IOSP and Commission Staff as necessary, submit data requested by the Commission relating to its New Mexico operations, including but not limited to, revenue, expenses and facilities/usage data by inmate facility.
- D. IOSPs shall report to the Commission not later than April 1 the complaints it received about the service provided in New Mexico during the preceding calendar year. Complaints shall be categorized by type of complaint with a description of how each complaint was

17.11.12.21 NOTICE OF CHANGE IN CIRCUMSTANCE:

An IOSP shall notify the Commission in writing of the following change in circumstances:

- A. a change in the IOSP's name, address, or phone number;
- B. a change in the name, address, or phone number of the person responsible for regulatory contacts and Consumer dispute resolution;
- C. merger of the IOSP with another provider;
- D. acquisition of the IOSP by another provider;
- E. acquisition by the IOSP of another provider;
- F. transfer of the IOSP's certificate;
- G. transfer of a significant portion of the IOSP's assets to another provider; and
- H. any other change in control of the IOSP.

17.11.12.22 DISCONTINUANCE OF SERVICE:

A. Prior to discontinuing service, an IOSP shall, no later than thirty (30) days prior to discontinuing service, file with the Commission a notice of discontinuance of service showing the number of Correctional Institutions affected.

B. This section does not apply to individual service withdrawals of an IOSP.

17.11.12.23 WAIVERS:

The Commission recognizes that public health and safety and the requirements of the Correctional Institution may require exceptions to requirements contained in this rule. In those cases, the IOSP may petition the Commission for a waiver of a particular requirement, which shall not be unreasonably withheld.

17.11.12.24 SEVERABILITY:

If any part of this rule is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

handled. The categories of complaints shall include at least the following: service, billing, rates, and other.

E. Not later than March 15 of each year, Commission Staff will provide a letter to each Correctional Institution in New Mexico and to the respective IOSPs with information about the Commission's jurisdiction over IOSPs.

17.11.12.20 TRANSFER OF CERTIFICATE:

Any holder of a certificate of registration to provide Institutional Operator Services in New Mexico seeking to transfer the certificate to another person shall first apply to the Commission for approval of the transfer. The Commission shall approve an application for transfer of a certificate of registration upon receipt of a completed application and a copy of the tariff proposed to take effect upon approval of the transfer. The application shall meet the requirements of 17.11.XX.10 NMAC.

17.11.12.24 VARIANCES:

- A. Any IOSP may request a variance from any requirement of this rule.
- B. A petition for a variance shall be supported by an affidavit signed by an officer of the applicant or a person with authority to sign for the applicant.
- C. Any variance must contain the information required by the Commission's procedural rules under 1.2.2.40 NMAC.

ADDENDUM A – RATE CAPS⁴

Intrastate	Prepaid Inmate	Prepaid Collect	Collect
Local per call	\$0.00	\$0.00	\$1.00
per minute	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25
IntraLATA			
per call	\$0.00	\$0.00	\$1.00
per min	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25
InterLATA			
per call	\$0.00	\$0.00	\$1.00
per min	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25
Processing	Call-In	Web	
Credit Card/Check by Phone-Initial	\$3.00	\$3.00	
Credit Card/Check by Phone-Subsequent	\$3.00	\$3.00	
Refund of Unused Balance	\$3.00	\$3.00	

⁴ See Amended Joint Stipulation Between Public Communications Services, Inc. and NMPRC Utility Division Staff, at p. 7 (para 23), filed July 6, 2010.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE PETITION TO
COMMENCE RULEMAKING PROCEEDING
FOR INSTITUTIONAL OPERATOR SERVICE
PROVIDERS.**

**INMATE CALLING SOLUTIONS, LLC AND
PUBLIC COMMUNICATIONS SERVICES, INC.,**

PETITIONERS.

Case No. 10-00198-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Final Order and Final Rule** adopted November 8, 2012, was sent on November 13, 2012, by first class postage pre-paid mail and, when possible, by electronic mail to the individuals listed below.

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DATED this 13th day of November, 2012

NEW MEXICO PUBLIC REGULATION COMMISSION


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